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QUEEN'S BENCH, MONTREAL

Mr. JUSTICE WÜRTELE'S

CHARGE TO THE GRAND JURY

Tuesday, 1st March, 1898.

GENTLEMEN OF THE GRAND JURY :

Your function here is to examine the bills of indictment which will be laid before you by the crown prosecutors, and to hear the witnesses whose names are written on the back of the bills with reference to the indictable offences with which the accused are charged.

The proceedings which take place before you in each case do not constitute a trial of the accused, but are in the nature of an investigation, and your duty will be simply to inquire and ascertain whether there is sufficient evidence to require the accused to answer the charge laid against him and to stand a trial.

As it is not a trial but an inquest which you will hold on each accusation submitted to you, the witnesses for the prosecution alone will be brought before you, and the evidence on behalf of the accused will only be adduced when he is placed on his trial. The witnesses will be marshalled before you by the crown prosecutors or by the clerk of the crown or his deputies, and will be sworn by your foreman or by whoever may temporarily act in his place, and as they are sworn your foreman or his substitute will write his initials against their names on the back of the bill under consideration. If it should be desirable to examine as a witness any person whose name is not on the back of a bill, it will be necessary to obtain the written order of the presiding judge to that effect.

The witnesses may be examined by the crown prosecutors or by the clerk of the crown or his deputies, but you may put any questions you like to them or you may yourselves conduct their examination.

As soon as you may be satisfied that a sufficient case has been made out to send an accused to his trial, you need not hear any further evidence, but, on the other hand, you must not declare that a case has not been established until you have heard all the witnesses whose names are on the bill or whom the crown prosecutors may obtain the authorization of the judge to bring before you.

None others than the crown prosecutors, the clerk of the crown and his deputies, and the witnesses when introduced, must be allowed to enter your room. When you deliberate on a case, after having heard the evidence, you should be alone, and you must therefore cause the persons who are not members of the grand jury to withdraw.

At the present time a grand jury is composed of twelve jurymen, but you may proceed with your investigations whenever at least seven jurymen are present. Whatever number of jurymen may be in attendance, it requires the concurrence of seven jurymen to maintain the charge.

If it should therefore appear to seven of you, after having heard and considered the evidence which may be adduced, that the crown has established sufficient ostensible grounds for calling on an accused to answer the accusation which has been brought against him, you will report to the Court that the charge is well founded ; but if, on the contrary, seven of you should not find that the proof is sufficient to justify the preferring of the charge, you will report that it is not founded. In the first case, your foreman will write on the back of the bill the words : " A true bill," and in the other case the words : " No bill." He will in either case sign his name below the indorsement and will add below his signature the word " Foreman," to show his office.

You will bring all the bills which you may consider into court, and your foreman will deliver them to the clerk of the crown, who will in your presence announce your findings publicly.

In all your proceedings you must act with strict impartiality, and you must not allow yourselves to be swayed for or against an accused by either fear of consequences or favor. The institution of the grand jury, it has often been said, is a safeguard to the liberty of the subject, and it will be your bounden duty, without regard to the position of the accuser, to throw out every bill which may appear to you to have been preferred either through malice or on insufficient grounds ; but at the same time you must not forget that it is due to society, and is necessary for the preservation of order and of the well-being of the community, that evil-doers should be brought to justice and punished, and that it therefore equally becomes your duty, without favor or regard for persons, to find a true bill whenever the evidence induces your minds to the belief, although you may not possess a moral certainty, that the crime charged against an accused has been committed.

The calendar for the term contains a large number of cases, but I am glad to be able to say that the number is less than in the March term of last year. In view of the increasing population of the city and also of the district

of Montreal, this fact speaks well for the conduct and good behaviour of the inhabitants and is a subject for congratulation.

Although we have to regret that there should be a few capital cases, it is at least an alleviation to the painful sensation caused by the commission of such crimes in our midst, to know that they do not reveal the revolting features which have characterized the recent commission of similar crimes elsewhere in our province.

And in connection with this subject I cannot refrain from regretting, as I did once before in addressing another grand jury, the publication of extremely sensational articles and wood-cuts in many of our newspapers, with reference not only to the murders and other capital crimes which have occurred from time to time, and to the judicial proceedings which have taken place respecting them, but also with reference to the personality of the prisoners who were on their defence. Such articles and wood-cuts are not required to convey to the public the information, to which they are entitled, of what is happening ; and while a moderate and thoughtful article can form and direct a proper public feeling, these sensational articles and wood-cuts, on the other hand, only pander to the imagination and to morbid feelings, and sometimes incite to the commission of crime persons who are wanting in moral perception and who crave

for personal notoriety. They are also hurtful to the proper administration of criminal justice, as they tend imperceptibly to influence the minds of persons who may be called upon to act as jurors, and thus hinder the selection and formation of impartial juries. Under the law as it now stands, however, the publication of such articles and wood-cuts cannot be judicially suppressed, and if I draw attention to this matter, it is only so that I may at the same time express the hope that the evil, if it cannot be abated, may at least be sensibly lessened by the influence of an awakened sane public opinion.

There is another thing in this connection which is much to be deplored : — it is the fact that reporters are allowed to interview prisoners for the purpose of publishing articles describing their appearance and demeanor, and giving their sayings. The publication of these articles is certainly productive of no good and only gratifies the morbid curiosity of inconsiderate people. Prisoners have rights like other people, and for a reporter, without their invitation or consent, to intrude upon them and to interview them, is an encroachment on their privacy to which they should not be subjected. In fact none others than the near relations and intimate friends, those having urgent business, and the counsel of prisoners awaiting trial or under sentence in capital cases, should be allowed access to

them. But this is a matter which can be regulated by the rules and regulations of the prison inspectors or by an order from the Provincial Attorney General to the Sheriffs, and I believe that it will be sufficient to draw their attention to it.

I now invite you to retire to the room set apart for the Grand Jury and to proceed with your work. If you should require any instructions on any legal questions which may arise during your proceedings, you may apply in open court to the presiding judge, and the information which you require will be given to you.

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